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Supreme Court, U.S.

FILED

JUN 13 1988

JOSEPH E. SPANIOLO, JR.  
CLERK

No. \_\_\_\_\_

IN THE  
SUPREME COURT  
OF THE UNITED STATES  
  
October Term, 1987

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RICHARD G. KASCHAK,  
Petitioner,

vs.

PINE MOUNTAIN CLUB PROPERTY  
OWNERS ASSOCIATION,  
Respondent,

---

ON PETITION FOR WRIT OF MANDATE  
IN THE CALIFORNIA COURT OF APPEAL  
FOR FIFTH APPELLATE DISTRICT

---

PETITION FOR A WRIT OF CERTIORARI

RICHARD G. KASCHAK  
1928 Carmen Avenue  
Hollywood, Calif.  
90068  
(213) 462-8803  
Pro Se Petitioner

June 10, 1988

37 Pp



## QUESTIONS PRESENTED

1. Can an appellate court permit foreclosure of lien on a veteran's homestead property without due process of law and equal protection as guaranteed by the United States Constitution and Amendments V, VI, and XIV?
2. Can an appellate court ignore Federal law and prima facie evidence and exhibits of Federal, HUD (Housing Urban Development) and State real property mandatory public report in determining legal contractual questions of law pertaining to rights and covenants of petitioner-homesteader as well as 3,000+ other property owners at this land development project?
3. Can an appellate court ignore uniformity decision California stare decisis law precedence of appellate districts; conflicts of decision which are violation of U.S.C. Amendment XIV?

4. Can courts & judges ignore witness abuse and non-compliance of lawful, legal court subpoena which required court attendance of an essential hostile witness (accountant) in order to prove and support petitioner's complaint and case? Is this witness deprivation a violation of due process and the U.S.C. Amendment XIV?

5. Whether courts and judges afford an in pro per (or pro se) petitioner the same procedural safeguards, rights, and privileges and justice of due process and equal protection as when a petitioner is represented by an attorney or counsel of repute? Is there a dual standard of justice and dignity as towards a petitioner in pro per?

## LIST OF PARTIES

The parties to the proceedings below were the petitioner, Richard G. Kaschak, in 'pro per' and the respondents, Pine Mountain Club Property Owners Association, a supposedly non-profit association represented by their legal counsel and law firm of Monteleone & McCrory, and their attorney of record in this case to date, Debra Tilson Lambeck.

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PETITION FOR A WRIT OF CERTIORARI  
TO THE CALIFORNIA COURT OF APPEAL  
FOR THE FIFTH APPELLATE DISTRICT.

---

The petitioner, Richard G. Kaschak, respectfully prays that a writ of certiorari issue to review the denial for request for petition for writ of mandate of the California Court Of Appeal for the Fifth Appellate District, entered and filed in the above entitled proceeding on February 5, 1988.

The Supreme Court of the State of California denied petitioner's petition for review on March 16, 1988.

#### OPINIONS BELOW

The opinion of the Superior Court, State of California, County of Kern Appellate Department, is re-typed in the appendix hereto, page la, infra.

#### JURISDICTION

Petition to the Court Of Appeal of the State of California for the Fifth Appellate District was summarily denied on December 22, 1987. Petition For Rehearing and Finality of Judgment was dismissed on January 13, 1988.

Amended petition for writ of mandate was again filed to the Court Of Appeal of the State of California for the Fifth Appellate District and was denied on February 5, 1988.

Petition For Review of Decision Of The Court Of Appeal of the State of California for the Fifth Appellate District was made to the Supreme Court of the State of California on February 10, 1988. On March 16, 1988, the Supreme Court Of The State Of California, DENIED petitioner's petition for review.

This petition for certiorari is filed within 90 days of March 16, 1988, and the Supreme Court Of The United States jurisdiction is invoked under Title 28, United States Code, Chapter 81, Sec. 1257 (3).

CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED

FIFTH AMENDMENT, United States Const:

"No person shall...be deprived of  
life, liberty, or property, with-  
out due process of law...."

SIXTH AMENDMENT, United States Const:

"...To have compulsory process  
for obtaining witnesses in his  
favor.....right to a speedy  
and public trial by an impart-  
ial jury of the State...."

FOURTEENTH AMENDMENT, United States Const:

"Section 1...nor shall any State  
deprive any person of life,  
liberty, or property without  
due process of law...."

THE CODE OF THE LAWS OF THE UNITED STATES  
OF AMERICA (United States Code Service)

TITLE 15 -Commerce And Trade, Chapter 42  
Interstate Land Sales:

Sec. 1701 et seq...Underlying purpose  
of Interstate Land Sales Full Disclo-  
sure Act is that prior to purchase,  
buyer be informed of facts which would  
enable reasonably prudent individual to  
make informed decision about purchasing  
property.

Sec. 1705 (12)...Information required  
In Statement Of Record...such docu-  
ments and certifications as the secre-  
tary may require as being reasonably  
necessary or appropriate for the pro-  
tection of purchasers.

Sec. 1707 (a)...Information required in property report...property rept. shall also contain such other information as the Secretary may by rules or regulation require as being necessary or appropriate in the public interest or for the protection of the purchasers.

Sec. 1719...Jurisdiction of offenses and suits ...U.S. Courts.

#### CODE OF FEDERAL REGULATIONS

24 CFR 1710 - 1715...merits and necessities of land registration and H.U.D. (Housing Urban Development )

Sec. 1715.50 (a) ..."Obtain the property report required by Federal Law and read it before signing anything...."

## STATEMENT OF THE CASE

Petitioner at all times represented himself as in pro per (pro se) since petitioner could not afford the monetary expense of an attorney or legal counsel.

Petitioner purchased fee simple land at Pine Mountain Club on December 3, 1973, and legally assumed the original existing by-laws dated May 6, 1971, and the developer's public report (State & Federal, H.U.D.) issued January 18, 1973, which were duly and legally recorded in the County.

Respondent, Pine Mountain Club Association, repeatedly changed, amended, deleted, and completely re-wrote the original by-laws of 1971 throughout the years of 1975 to present day without ever having the necessary 55% total property votes (including petitioner's) as required pursuant to the original by-laws and legal land public report.

Over the petitioner's constant verbal objections (in the court record) the trial court judge refused to admit into evidence the only valid 1971 legally assumed by-laws and the 1973 California & Federal H.U.D. land public report which were both legally assumed by the petitioner in December 1973 land purchase contracts.

Secondly the trial court judge ignored State Of California stare decisis law of the Appellate District\*\* which held that board of directors lacked authority to modify covenants and by-laws without written consent of not less than two-thirds of all said property owners.

\*\* Ticor Title Ins. Co, etc.  
vs Rancho Santa Fe Assoc. (1986)  
223 Cal Rptr 175, Cal Ap  
Fourth District Div. 1  
Feb. 18, 1986

Petitioner refused to pay unlawful assessment to respondent because of this breach of contract action by respondent.

Respondent further violated the covenants of the 1971 original by-laws and 1973 land public report by refusing the petitioner the following benefits and covenant rights:

- 1) Voting Rights
- 2) Use Of Facilities
- 3) Inspection Of Books/Records
- 4) Proper Fiduciary Mgmt

The trial court judge only admitted into evidence the respondents illegal, un-authenticated, unrecorded by-laws of 1982 which were never approved by the petitioner, by the petitioners two (2) witnesses, and/or 55% of the total property owners membership as required by law and the original by-laws.



The trial court judge in open court ignored the abuse and non-compliance of a lawful, legal court subpoena of a witness that was being ordered by the petitioner as an import and essential hostile witness to prove and support petitioner's complaint and case. Instead of an immediate contempt citation being ordered, the trial court judge and the respondent's female counsel went into the judges private chambers to discuss the subpoena issues. Petitioner in proper was completely ignored and not invited to participate in the "closed door" questionable discussion of subpoena law. Petitioner objected to no avail. Petitioner's subpoena hostile witness was not cited for contempt; nor ordered to appear at trial at a continued time and date. Petitioner again registered objections to no avail by

the honorable trial court judge.

The trial court judge awarded to respondent the outrageous sum of \$8,406.62 for attorney fees (not detailed & explained), and \$3,349.87 lien fees upon which the respondent seeks foreclosure of petitioner's homestead real property.

In its Opinion, the Superior Court of State Of California, Appellate Department refused to address and rule upon the relevant appeal issues of:

1. Federal, HUD, and State property public report & original by-laws.
2. Uniformity decision California stare decisis law of the Appellate District & conflicts.
3. Abuse and non-compliance of lawful, legal court subpoena for essential hostile witness.

# REASONS FOR GRANTING THE WRIT

## I.

DEPRIVATION AND DENIAL OF PROCEDURAL DUE  
PROCESS AS IS MANDATED BY THE DUE PROCESS  
CLAUSE AND CONSTITUTIONAL AMENDMENTS  
V. VI. and XIV.

The FOURTEENTH AMENDMENT forbids any  
state deprive "any person of life, liberty,  
or property without due process of law."

In Anti-Fascist Committee v McGrath  
341 U.S. 162 the court said:

"...Due process, unlike some  
legal rules is not a technical  
conception with a fixed content  
unrelated to time, place, and  
circumstances."

In Mathews v Eldridge, 424 U.S. 334,  
the court said:

"...Due process is flexible and  
calls for such procedural pro-  
tections as the particular sit-  
uation demands." Also Morrissey  
v Brewer, 408 U.S. 471.

In Palko v Connecticut, 302 U.S. 319,  
it was said:

"The hearing moreover must be  
a real one, not a sham or a  
pretense."

The fundamental requisite due process is the opportunity to be heard.

U.S.C.A. Amend 14, Mullane v Central Hanover 70 S.C. 652, 339 U.S. 306.

In Memphis Light v Craft it was stated:

"...Opportunity to present their objections."

In this instance case, Petitioner, Richard G. Kaschak, has been denied the due process by the trial courts refusal to admit into evidence:

- 1) Petitioner's assumed by-laws dated May 6, 1971.
- 2) Petitioner's assumed HUD public report dated Jan. 18, 1973.

Furthermore, the Superior Appellate Court completely ignored and refused to rule on the relevant issues of petitioner's assumed by-laws and assumed HUD public report.

The SIXTH AMENDMENT guarantees that a defendant (petitioner) is entitled to

have compulsory process for obtaining witnesses in his favor.

In *Washington v Texas*, 338 U.S. 14, the court said:

"The rights to offer the testimony of witnesses and to compel their attendance if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts...decide where the truth lies."

In *Taylor v Illinois*, 108 S.C.646, the honorable court said:

"The compulsory process clause is also grounded in the general constitutional guarantee of due process."

In *Chambers v Mississippi* 410 U.S. 284 the court stated:

"Few rights are more fundamental than that of an accused to present witnesses in his own defense."

In this instance, the Superior Appellate Court again completely ignored the third major relevant issue; that of trial court's non-compliance of peti-

tioner's subpoena served on the respondent's hostile witness.

Such is tantamount to misconduct at the trial court level; such is a sham or a pretense at the appellate level. (See *Palko v Connecticut*, supra).

Thus the facts speak for themselves that petitioner was deprived and denied procedural due process as mandated and guaranteed by the Constitutional Amendments XIV, VI, as well as due process of Amend. V guarantees.

## II.

FEDERAL STATUTORY LAW IS BEING IGNORED IN THE DECISIONS BELOW THAT BRINGS CAUSE FOR THE EXERCISE OF THE SUPREME COURT'S SUPERVISORY POWERS WHICH NOT ONLY AFFECT PETITIONER BUT POSSIBLY 3,000 or MORE PROPERTY OWNERS AT THIS SAME LAND DEVELOPMENT.

The Interstate Land Sales Full Disclosure Act, 15 U.S.C.S 1701 et seq spells out the great importance of land

registration and requisite important information required in the public property report for the protection of purchasers.

Supra on pages 4 and 5, the Federal statutory provisions have been set out which reiterate the importance of the property report to purchasers to protect their future rights.

Furthermore, the Code Of Federal Regulations, 24 CFR 1710 et sqq further declares the merits and necessities of the HUD public property report. Sec. 1715.50 (a) reads:

"Obtain the property report required by Federal Law and read it before signing anything."

In this instance case the lower court absolutely refused to allow the petitioner in pro per to enter it into evidence as a most important relevant issue to prove petitioner's case.

Furthermore, the Superior Appellate Court would not even discuss the issue of relevancy or not, in spite of the Federal Statutory Provisions involved.

Lower courts need the guidance from the Supreme Court as to the importance and applicability of Federal Statutory Law which seek to protect a purchaser's (and a Petitioner's) rights of real estate property and land.

Thus the inadmissibility of Petitioner's HUD public land report is contrary and in conflict with Federal Statutory Law; both the lower court and the Appellate Court should have entered and discussed and reviewed the relevant HUD public report issue which incorporates by reference the originally assumed by-laws of May 6, 1971.



## III

THERE EXISTS CONFLICTS IN PRINCIPLE AS BETWEEN THE FIFTH APPELLATE DISTRICT AND THE FOURTH APPELLATE DISTRICT IN THE CALIFORNIA COURT OF APPEAL.

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In Ticor Title Insurance Company v Rancho Santa Fe, 223 Cal Rptr 175, Cal App Fourth Dist, Div 1, 1986, the board of directors lacked authority to modify the covenants and/or by-laws. No such change or modification shall be made without the written consent of not less than two-thirds of all said property owners. The board acting alone....it involves ignoring express language in the covenant and denigrating the voting rights of the property owners. We do not believe the covenanting parties intended the Board to have such unfettered powers by the process of interpretation.

Thus in this instance case, the trial court and the Appellate Court completely ignored the burden of proof showing that 55% of the total membership ever approved any by-law changes and/or amendments to make valid the 1982 by-laws admitted into evidence by the court for the respondent.

Petitioner strongly objected that the 1971 by-laws were the only valid legally assumed by-laws by the Petitioner; that such 1982 by-laws admitted into evidence were made by the directors alone without any approval or ratification of the 55% membership or vote; that never had there been a 55% membership attendance let alone a 55% vote to change by-laws.

The trial court and the appellate court should have been bound by the uniformity of the Appellate Law of

the Fourth Appellate District in the precedent case of Ticor Title Insurance v Rancho Santa Fe discussed supra.

Hopefully the United States Supreme Court will not permit the Appellate Court to ignore case law precedence for the uniformity of decision and to resolve the CONFLICT as between the appellate courts.

A writ of mandate is the appropriate remedy to direct the lower court to apply the proper law. (Murtado v Superior Court, 1974, 11 Cal 3d 574, 114 Cal Rptr 106).

Unfortunately the Fifth Appellate Court denied Petitioner's Request For Writ Of Mandate. (See App 6a)

## IV

THE AIMS OF THE CONSTITUTION  
ARE THE ENHANCEMENT OF THE  
DIGNITY OF THE INDIVIDUAL  
(Justice William J. Brennan Jr.,  
"Inside The Marble Temple"  
1988 Television Program )

The Constitution of the United States of America does not clearly define what is "due process" and "equal protection" as is guaranteed by the Fourteenth Amendment as is applicable to the States. That is why the SUPREME COURT OF THE UNITED STATES must at all times construe and apply causes and be on guard to protect the rights of the United States individual; so as not to be over-ridden by State or Federal government.

"The enhancement of the dignity of the individual, those were the great aims of the Constitution."

Thus petitioner in pro se contends that he is such an individual who must be protected from procedural and mis-interpretation error of the lower appellate courts.

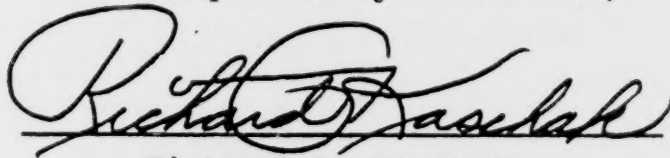
The Supreme Court's power to review over state judgments is to correct wrong judgments, not to revise opinions taking erroneous view of Federal law. *Herb v Pitcairn*, 324 U.S. 117.

There should be no dual standard of justice in the lower courts and the appellate courts just because a petitioner is in pro per, or in pro se and not represented by an attorney or highly recognized counsel of great repute.

## CONCLUSION

For all of the foregoing reasons, this petition for certiorari should be granted to the petitioner in pro se. Or in the alternative, petitioner prays for summary disposition on the merits by per curiam opinion; or that the Supreme Court remand the case to the Fifth Appellate District to hear petitioner's request for writ of mandate upon all of petitioner's relevant issues as set out in the writ and in the appellate court brief.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard G. Kaschak", written in a cursive style with a horizontal line underneath.

Richard G. Kaschak  
Petitioner In Pro Se  
1928 Carmen Avenue  
Hollywood, Calif. 90068  
(213) 462-8803

DATED: June 10, 1988

## APPENDIX

SUPERIOR COURT, STATE OF  
CALIFORNIA, COUNTY OF KERN  
APPELLATE DEPARTMENT

\* \* \* \* \*

Pine Mountain Club Property	)	
Owners Association, Inc.	)	
Plaintiff & Respondent,	)	No.
vs.	)	A-384
Richard G. Kaschak,	)	
Defendant & Appellant,	)	
<hr/>		
Richard G. Kaschak,	)	Trial Ct.
Cross-Complainant	)	No. CJ
and Appellant,	)	193
vs.	)	OPINION
Pine Mountain Club Property	)	
Owners Association, Inc.,	)	
Cross-Defendant	)	
and Respondent	)	
<hr/>		

This is an appeal from a judgment of  
the Maricopa-Taft Justice Court, the  
Honorable Robert C. Deabenderfer,  
Judge. Affirmed.

Richard G. Kaschak, in propria per-  
sona, for Defendant/Cross Complainant  
and Appellant.

Monteleone and McCrory, by Debra



Lambeck, for Plaintiff/Cross-Defendant and Respondent.

Respondent sought to enforce its right to foreclose a lien on Appellant's parcel of real property, alleging his failure to pay annual assessments. Appellant resisted by alleging a lack of authority to levy assessments in excess of \$50.00 per year and cross-complained asserting mismanagement and the commission of negligent and intentional torts. The trial court found in favor of Respondent on all issues.

Appellant relied upon the 1971 By-Laws, which set the \$50.00 limit and provided that the By-Laws could not be amended without the vote of 55% of the total votes of all the property owners. The trial court found that the By-Laws had been so amended in 1977 and again in 1982. Our function is to determine whether there is any substantial evidence to

support that finding. Overton vs Vita-  
Food Corp., 94 C.A. 2d 367. The tes-  
timony of Phyllis Morse, Respondent's  
Office Manager, is sufficient in this  
regard; she testified as to the amend-  
ments and through her the By-laws  
dated June 18, 1977, were introduced.

Appellant contends that the trial  
court erred in awarding attorney fees  
in the sum of \$8,406.62 in a case in  
which the total amount awarded for the  
unapid liens was \$3,349.87. While at  
first blush the disparity between the  
two certainly seems unreasonable, a  
reading of the transcript and a review  
of the records of the trial court just  
as certainly support the award. Respon-  
dent put on its case in chief in less  
than half a day. The remainder of the  
case took the equivalent of two full  
days. In addition, these were motions

and discovery that necessarily required Respondent's attorneys to devote more time to the case than the amount sought might otherwise justify. The amount of attorney's fees is within the sound discretion of the trial court. We find no abuse of discretion in light of the record on appeal.

Appellant contends that the trial court erred in not admitting into evidence business records, copies of which had been provided to him by Respondent through discovery. The records in question are monthly reports submitted to Respondent by an outside accountant. As noted by Respondent, Appellant made no effort to satisfy the foundational requisites of Evidence Code Sections 1271 and accordingly, they were properly refused.

Appellant raises several other contentions, which in our review of the

record are not supported as a matter of fact or law. Pursuant to People vs. Alberts, 138 Cal. App 2d Supp. 909, we decline to discuss them further.

The judgment is affirmed. Let remittitur issue.

DATED: September 10, 1987

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STUART, P.J.

WE CONCUR:

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RANDALL, J.

---

WALLACE, J.

FILED

ENDORSED

87 SEP 11 A 3:12

GALE S. ENSTAD, CLERK  
KERN COUNTY, CALIF.

IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

Richard G. Kaschak,	)	No.
Petitioner,	)	F009838
v.	)	(Sup.Ct No.
Superior Court, Kern County	)	A-384)
Respondent,	)	
Pine Mountain Club Property	)	
Owner's Association,	)	
Real Party in Interest.	)	

BY THE COURT: \*

The petition for writ of mandate, prohibition, or other appropriate relief is denied. In case No. F009566 on Dec. 22, 1987, this court denied a petition that was in all significant respects identical with the petition in the instant case.

Date: Feb. 5, 1988

\_\_\_\_ P.J.

\*Before Franson, P.J., Woolpert, J.,  
and Ardaiz, J.

ORDER DENYING REVIEW  
AFTER JUDGMENT BY THE COURT OF APPEAL  
5th District, No. F009838  
S004205

IN THE SUPREME COURT OF THE STATE OF  
CALIFORNIA

IN BANK

Kaschak, Petitioner,

v

Superior Court Of The County Of Kern,  
Respondent;  
Pine Mountain Club Property Owners Assoc.,  
Real Party in Interest.

Petitioner's petition for review  
DENIED.

LUCAS  
Chief Justice

SUPREME COURT FILED: March 16, 1988  
Laurence P. Gill, Clerk, Deputy

